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HOUSE OF REPRESENTATIVES
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Part 1

AVIATION SECURITY ACT OF 1989

MAY 18, 1989.—Ordered to be printed

Mr. ANDERSON, from the Committee on Public Works and Transportation, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1659]

[Including cost estimate of the Congressional Budget Office]

The Committee on Public Works and Transportation, to whom was referred the bill (H.R. 1659) to improve aviation security by requiring the installation and use of certain explosive detection equipment at certain airports located outside the United States and by providing assistance for the acquisition of such equipment, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Aviation Security Act of 1989".

TITLE I—DEPARTMENT OF TRANSPORTATION

SEC. 101. INSTALLATION AND USE OF EXPLOSIVE DETECTION EQUIPMENT.

Section 315 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1356) is amended by adding at the end thereof the following new subsection:

"(c) INSTALLATION AND USE OF EXPLOSIVE DETECTION EQUIPMENT.—Not later than 60 days after the date of the enactment of this subsection, the Administrator shall require all air carriers to install and use, as expeditiously as possible, explosive detection equipment which meets minimum performance standards requiring application of technology equivalent to or better than thermal neutron analysis technology—

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"(1) at airports (A) which are located outside the United States, and (B) at which the Administrator has determined, on or before such date of enactment, that air carriers must use extraordinary security measures; and

"(2) at such other airports (whether located within or outside the United States) as the Administrator determines that the installation and use of such equipment is necessary to ensure the safety of air carrier passengers.".

SEC. 102. MINIMUM SCREENING STANDARDS.

(a) GENERAL RULE.—Section 315 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1356) is further amended by adding at the end thereof the following new subsection:

"(d) MINIMUM STANDARDS.—The regulations under this section shall at a minimum require screening of (1) all passengers of an aircraft used in scheduled passenger operations with seating for more than 30 passengers at each airport regularly served by aircraft used in scheduled passenger operations with seating for more than 60 passengers, and (2) the carry-on property of such passengers.".

(b) CONFORMING AMENDMENT.—The portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 315. Screening of passengers in air transportation."

is amended by adding at the end thereof the following:

"(c) Installation and use of explosive detection equipment.
"(d) Minimum standards.".

SEC. 103. AVIATION SECURITY ASSISTANCE PROGRAMS.

(a) IN GENERAL.—The Airport and Airway Improvement Act of 1982 (49 U.S.C. App. 2201-2227) is amended by adding at the end thereof the following new section:

"SEC. 535. AVIATION SECURITY ASSISTANCE PROGRAMS.

"(a) AIR CARRIER SECURITY ASSISTANCE PROGRAM.—Subject to such terms and conditions as the Administrator may establish, the Administrator is authorized to make grants from the Trust Fund to air carriers required to install and use explosive detection equipment under section 315 of the Federal Aviation Act of 1958 to pay up to 100 percent of the cost of acquiring such equipment.

"(b) AIRPORT SECURITY ASSISTANCE PROGRAM.—Subject to such terms and conditions as the Administrator may establish by regulation, the Administrator is authorized to make grants from the Trust Fund to sponsors of airports to pay up to 100 percent of the cost of acquiring and installing equipment used to comply with regulations issued by the Administrator for controlling access to secured areas of airports.

"(c) APPLICABILITY OF OTHER PROVISIONS.—Except as the Administrator may otherwise provide, the provisions of this title (other than section 503, relating to definitions) shall not apply to this section and grants made under this section.

"(d) FUNDING.—

"(1) AIR CARRIER SECURITY ASSISTANCE PROGRAM.—The amount available for carrying out subsection (a) shall not exceed $100,000,000, of which not more than $50,000,000 shall be obligated in fiscal year 1989.

"(2) AIRPORT SECURITY ASSISTANCE PROGRAM.—The amount available for carrying out subsection (b) shall not exceed $170,000,000, of which not more than $85,000,000 shall be obligated in fiscal year 1989.

"(3) CONTRACT AUTHORITY.—The Administrator is authorized to incur obligations to make grants from funds made available under this subsection. Each grant agreement under this section must provide that no payment of funds shall be made by the Administrator before October 1, 1989. Notwithstanding any other provision of law, approval by the Administrator of a grant with funds made available under this subsection shall be deemed to be a contractual obligation of the United States for payment of the Federal share of the cost of acquisition of equipment.

"(4) INAPPLICABILITY OF OBLIGATION CEILINGS.—Funds made available by this subsection shall not be subject to any obligation limitation.".

(b) RESCISSION OF PORTION OF AIP UNOBLIGATED CONTRACT AUTHORITY.—$270,000,000 of unobligated contract authority available for airport development and planning under section 505(a) of the Airport and Airway Improvement Act of 1982 is rescinded.

SEC. 104. AIRPORT SECURITY PROGRAMS.

Section 316 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1357) is amended by adding at the end thereof the following new subsection:

"(g) AIRPORT TENANTS SECURITY PROGRAMS.—The Administrator may approve under this section a security program of an airport operator, and may approve an amendment to a security program of airport operator approved by the Administrator under subsection (b), which incorporates a security program of an airport tenant (other than an air carrier separately complying with part 108 or 129 of title 14 of the Code of Federal Regulations) having access to the secured areas of the airport—

"(1) if such program or amendment incorporates the measures by which the tenant will carry out, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, the security requirements imposed by the Administrator on the airport operator pursuant to the access control system requirements of section 107.14 of such title or to other requirements of part 107 of such title; and

"(2) if such program or amendment incorporates the methods by which the airport operator will monitor and audit the tenant's compliance with such security requirements and provides that the tenant will be required to pay financial penalties to the airport operator in the event the tenant fails to carry out any such security requirement in accordance with a contractual provision or requirement imposed by the airport operator.

If the Administrator approves a program or amendment described in this subsection, the airport operator may not be found to be in violation of a requirement of this section in any case in which the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for such violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.".

SEC. 105. PUBLIC NOTIFICATION OF FOREIGN CARRIER SECURITY PROGRAM STATUS.

(a) IN GENERAL.—Section 316 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1357) is further amended by adding at the end thereof the following new subsection:

"(h) PUBLIC NOTIFICATION OF FOREIGN CARRIER SECURITY PROGRAM STATUS.—For the purpose of notifying the public, the Secretary of Transportation shall publish periodically, but not less than quarterly, the names of those foreign air carriers which are complying with the security measures which the Administrator has imposed upon air carriers serving the same airports as such foreign air carriers.".

(b) CONFORMING AMENDMENT.—The portion of the table of contents contained in the first section of the Federal Aviation Act of 1958 which appears under the side heading

"Sec. 316. Air transportation security."

is amended by adding at the end thereof the following:

"(g) Airport tenants security programs.
"(h) Public notification of foreign carrier security program status.".

SEC. 106. RULEMAKING PROCEEDING.

Not later than 90 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall initiate a rulemaking proceeding to propose and consider methods of improving the effectiveness of security screening of air carrier passengers and carry-on baggage, including proposals for the Federal certification of air carrier security screening personnel and proposals to improve the qualifications, training, management, and retention of such personnel.

TITLE II—DEPARTMENT OF STATE

SEC. 201. AVIATION EQUIPMENT.

The Secretary of State shall take all appropriate steps to ensure that equipment necessary for implementing airport and air carrier security measures at foreign airports is considered by governments of foreign countries to be aviation equipment for customs purposes and exempt from customs duties and taxes.

BACKGROUND

H.R. 1659, the Aviation Security Act of 1989 establishes a program to maximize the effectiveness of the security system which protects airline passengers against terrorist attacks. The need for this legislation was brutally called to public attention last December 21, when a powerful bomb exploded aboard Pan American

Flight 103 over Lockerbie, Scotland. Two hundred and seventy lives were lost in the ensuing crash.

Following this tragedy, the Aviation Subcommittee held two days of intensive hearings on a wide range of aviation security issues. One of these days was held in closed session so that the Subcommittee could receive the benefit of information which, if publicly disclosed, would endanger aviation security. After the hearings, H.R. 1659 was introduced and an additional day of hearing was held to receive comments on this legislation.

H.R. 1659 is a response to the evolving nature of the terrorist threat to aviation. When the aviation security systems in place today were developed in the 1970's, the main threat to aviation security was hijackings. The programs developed to meet this threat included the screening of passengers and carry-on baggage for weapons, and programs to ensure that law enforcement officials would respond quickly and effectively to a hijacking threat.

In the last few years hijackings have declined, but a new and terrifying threat has developed, the random destruction of aircraft by terrorist bombs. Since the summer of 1985, there have been four aircraft bombings in international aviation, an average of more than one a year.

To meet this threat H.R. 1659 establishes programs to provide funding for airlines and airports to acquire and use the best available technology to enhance security.

EXPLOSIVE DETECTION TECHNOLOGY

First, the bill establishes a program to fund the purchase of explosive detection equipment, employing technology equivalent to or better than thermal neutron analysis (TNA). The Federal Aviation Administration has spent more than $45 million in research and development of explosive detection technology. In TNA technology, baggage passes through a device that irradiates the container with neutrons. A computer analysis is made of the "signature" return of chemical compounds in the baggage. The machine then indicates if the signature matches that of chemical compounds used in explosives. Testing of TNA devices established a 95% success rate in the detection of explosives, and the rate can be increased by making the machine more sensitive (which has the disadvantage of increasing the false alarm rate). FAA will be receiving six TNA units in the last half of this year for deployment at high risk airports.

The Committee believes that TNA technology has now developed to a point where it can make a major contribution to aviation security by detecting explosives placed in checked baggage or cargo. H.R. 1659 requires that United States airlines install and use explosive detection equipment equivalent to or better than TNA equipment at high risk foreign and domestic airports. H.R. 1659 establishes a program of funding from the Airport and Airway Trust Fund to aid airlines in acquiring and installing this equipment.

The Committee also encourages the Federal Aviation Administration to support the development of technologies other than thermal neutron analysis, such as advanced back scatter x-ray inspection systems and vapor detection systems, which have a high potential for enhancing security. The Committee requests the Adminis-

trator to report to the Committee on an annual basis on the status of all promising explosive detection technologies. The report should include data on false alarm rates, performance, sensitivity and cost.

The Committee also recommends that the Federal Aviation Administration, in consultation with other government agencies with security expertise (such as the State Department and the Federal Bureau of Investigation), establish a protocol for bench-mark testing of all technologies which are being considered for explosive detection. The testing process should consider explosives of different sizes, shapes, and weight and different methods of concealment in luggage and carry-on bags. Testing should be conducted by experts with substantial counter terrorism expertise so that the results are most likely to be meaningful in a "real world" environment. All technologies should be subject to continuing testing and evaluation to learn their shortcomings and improve explosive detection technology and implementation.

FOREIGN AIR CARRIER SECURITY

Requiring United States air carriers to use the best available explosive detection equipment does not fully solve the problem of protecting United States citizens travelling internationally. Approximately 50% of the United States citizens who travel internationally travel on foreign airlines. To protect these passengers it is necessary that foreign airlines use the best available technology and employ the same extraordinary security measures as are currently being required of United States airlines.

The Executive Branch of the United States government has been working to upgrade security on foreign airlines through multilateral action by the International Civil Aviation Organization, and through bilateral agreements with individual countries. These efforts are extremely important and should be continued. However, in the event that they are not successful with respect to any particular country we need to assure ourselves that United States citizens will have the ability to make an informed judgement as to whether to undergo the risk of travelling on a foreign airline with less stringent security requirements than U.S. airlines.

To accomplish this, H.R. 1659 requires that the Department of Transportation periodically publish a list of those foreign airlines which are employing the same security measures as United States airlines serving the same routes. Publication of this list will encourage foreign carriers to upgrade their security so that they will be included in the list. In the event foreign airlines do not respond to these incentives, United States citizens will have a basis for making an informed decision as to whether to travel on a particular foreign airline.

AIRPORT ACCESS CONTROL SYSTEMS

H.R. 1659 also provides funding for airports to comply with requirements recently imposed by the Federal Aviation Administration that airports upgrade the systems used to control access to secured areas of the airport. The access control systems currently in place at many airports rely on identification cards which must be

displayed to gain access to a secured area. The FAA has concluded that these procedures do not furnish adequate protection against the use of forged, stolen, or expired identification cards.

Computer-controlled card systems can furnish much better access control. A computer system can precisely identify the areas of the airport to which a particular individual is entitled to have access. With proper input, the computer can determine when an individual's status has changed or when a card has been lost or stolen.

On January 6, 1989, FAA issued a final rule requiring airports to install, on a phased schedule, access control systems equivalent to or better than computer controlled systems. H.R. 1659 establishes a funding program to help airports meet the substantial expenses they will incur in installing these systems.

FUNDING OF SECURITY PROGRAMS

The Executive Branch has disagreed with the Committee's approach of providing funding from the Airport and Airway Trust Fund to reimburse airlines for the expense of acquiring and installing explosive detection equipment. The Administration's position is that these expenses should be met by the airlines adding an extra charge to the fares paid by their passengers.

The Committee strongly believes that funding from the Trust Fund is the best approach. We believe that these extraordinary security expenses are most appropriately funded by the government rather than through increases in air fares. The current terrorist threat against United States airlines is not directed at actions taken by the airlines. Rather the airlines are a target of opportunity for grievances which terrorists believe they have against the United States government.

The Committee believes that our government should play a major role in helping the airlines meet the terrorist threat. The situation is analogous to the recent hostile actions against shipping in the Persian Gulf which threatened our oil supply. Our government did not ask oil companies or consumers of oil to pay the costs of assuring safe passage through the Gulf. The government itself took the necessary actions including the expensive deployment and use of military force. U.S. servicemen gave their lives defending the right of free passage through the Gulf.

We would also find it objectionable for United States passengers to be asked to pay additional charges for extraordinary security, when these passengers have already been paid substantial taxes (an 8% ticket tax on domestic transportation and a $3.00 boarding charge for international flights) for safety and security. The taxes paid by airline passengers go into the Airport and Airway Trust Fund, which was set up to fund programs to ensure a safe and efficient air transportation system. Unfortunately, because of vagaries of the budget process, a significant portion of the money contributed by the aviation users has not been spent and a surplus of $5.8 billion has been allowed to accumulate in the Trust Fund. Having contributed this $5.8 billion to the Trust Fund, airline passengers should not be called on to make additional contributions to fund extraordinary security measures.

Opponents of H.R. 1659 have argued that although it may be desirable for the United States government to pay the expenses of security programs from the Trust Fund, the reality of the budget and appropriations process is that any funding for security programs from the Trust Fund will have to be offset by reductions in other aviation programs funded by the Trust Fund. The Committee has been concerned with this problem and we have developed a funding mechanism which can be implemented without a need to reduce funding for other aviation programs.

The reported bill offsets the $270 million funding for new security programs with a rescission of $270 million of unused authority from the Airport Improvement Program (AIP). With this offset, the bill does not create any new spending authority, and no reductions in other aviation programs will be required.

The unused authority which the bill rescinds is unlikely to ever be used. Under the governing law, amounts in the AIP program which we are not used in one fiscal year carry forward to future years. The unused amounts which have accumulated in the AIP program include more than $200 million of AIP authority which could not be used in fiscal years 1982–86, $17 million of unused authority from fiscal year 1987 and $433 million of unused authority from fiscal year 1988.[1]

H.R. 1659 rescinds $270 million of this unused authority. Although this rescinded authority theoretically continues to be available in future fiscal years, in reality it will be difficult to get the Appropriations Committee to allow the amount newly authorized each year to be spent, much less to allow us to spend unused authority from prior years. Thus, the rescission will not produce a reduction in actual spending for aviation.[2]

Opponents of H.R. 1659 have also contended that there is no precedent for using the Airport and Airway Trust Fund to reimburse airlines for security expenses. However, there have been past occasions when the Trust Fund has been used for this purpose. In the 1976 reauthorization of the Trust Fund, Public Law 94–353, we authorized grants from the Trust Fund to compensate air carriers for expenses for security screening of passengers moving between the United States and foreign countries. In the 1982 reauthorization, this authorization was continued to permit reimbursement for expenses incurred no later than 180 days after the date of enactment of the International Air Transportation Competition Act of 1979. A total of $15 million was authorized to be appropriated from the Trust Fund for this program and in fact virtually all of this amount was appropriated and paid to airlines.

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[1] Unless there is a change in the obligation ceiling for fiscal year 1989, an additional $300 million will carry forward from fiscal year 1989.

[2] Opponents of the bill have also raised a technical argument that the Appropriations Committee will be charged with "outlays" for the H.R. 1659 and that as a result Appropriations will have to reduce other aviation programs. To meet this concern, we have sought the advice of the Congressional Budget Office which has ruled that if the Appropriations Committee does not interfere with the new security programs by imposing obligation ceilings, then the Appropriations Committee will not be charged with outlays for the new programs for fiscal year 1990. If there are no outlays charged to Appropriations, there will be no need for that Committee to cut other programs.

IMPROVED SCREENING OF PASSENGERS AND CARRY-ON BAGGAGE

The reported bill also takes steps to improve the current system for screening passengers and carry-on baggage. In all too many cases, the employees of the contractors who provide x-ray screening of carry-on baggage are not well paid, and not sufficiently motivated to efficiently carry out their repetitive, potentially boring jobs. Over the past year, FAA has become properly concerned with the low detection rate in tests of the screening process. FAA has sought to improve the record by imposing stiff civil penalties. Although this program has improved the average detection rate, further improvements are needed.

Testimony of the Aviation Subcommittee hearings indicated that there are a number of steps which could be taken to improve the effectiveness of the screening process. For example, United Airlines testified that it had taken such steps as better supervision and management of personnel, improved training, better pay and incentives, and reliance on better equipment and technology. The FAA pointed out that the United program has increased the detection rate in tests from approximately 70% to a near perfect rate.

The reported bill requires FAA to initiate a rulemaking process to propose and consider methods of making passenger and carry-on baggage screening more effective. FAA should consider proposals to improve the process by certification of screening personnel as well as by other measures to improve the qualifications, training, management, and retention of security personnel.

The reported bill also takes steps to enhance the screening of passengers by commuter airlines. Under current FAA regulations, commuters operating aircraft with fewer than 60 seats are not required to screen passengers and carry-on baggage. The Committee believes that such screening could be accomplished without unduly burdening commuters. The reported bill directs commuters, to screen passengers on aircraft of 30–60 seats at airports at which there already are screening devices being used by airlines operating large aircraft. At these airports, commuters can use the screening devices already in place and would not have to undergo the expense of purchasing new equipment. Requiring screening by commuters at these airports would enhance security without unduly burdening the carriers.

DEPLOYMENT OF FAA SECURITY PERSONNEL

The Pan American accident calls attention to the need for adjustments in the deployment of FAA staff. In view of the serious threat to our citizens at flights from foreign airports, the Committee urges the Administrator to assign as quickly as possible sufficient numbers of FAA security personnel to overseas areas where they can facilitate compliance with security requirements by U.S.-flag airlines at foreign airports. Although the Administrator might have to use temporary duty procedures to deploy FAA personnel initially, the Committee believes that the assignment of such security personnel should be made using permanent assignment procedures.

K-9 EXPLOSIVE DETECTION TEAM PROGRAM

The Committee believes that FAA's K-9 Explosive Detection Team Program has contributed significantly to the security of travelling public. The Committee urges that the FAA to take steps to expand this program beyond its current size so that the security benefits will be more widely realized.

SECTION-BY-SECTION ANALYSIS OF H.R. 1659

Section 1. Short title

Provides that this Act may be cited as the Aviation Security Act of 1989.

TITLE I—DEPARTMENT OF TRANSPORTATION

Section 101. Installation and use of explosive detection equipment

Provides that not later than 60 days after date of enactment the Administrator shall require all air carriers to install and use, as expeditously as possible, explosive detection equipment which meets minimum performance standards equivalent to or better than thermal neutron analyses technology. This equipment must be installed at foreign airports which are now subject to extraordinary security measures. The Administrator may also direct that the equipment be installed and used at other foreign and domestic airports at which the Administrator determines that use of this equipment is necessary to ensure the safety of air carrier passengers.

Section 102. Minimum screening standards

Requires security screening of passengers in scheduled service with aircraft of more than 30 seats, and their carry-on baggage, at airports regularly receiving scheduled passenger service with aircraft of more than 60 seats.

Section 103. Aviation security assistance programs.

(A) Provides that the Administrator may make grants from the Airport and Airway Trust Fund to air carriers to install explosive detection equipment required under Section 315 of the Federal Aviation Act. The grant shall pay up to 100% of the cost of acquiring such equipment. The amounts available for these grants shall not exceed $100,000,000 of which not more than $50,000,000 shall be obligated in fiscal year 1989.

(B) Provides that the Administrator may make grants from the Airport and Airway Trust Fund to airport sponsors to pay up to 100% of the cost of acquiring and installing equipment used to comply with FAA requirements for controlling access to secured areas of airports. The funds made available for this program shall not exceed $170,000,000 of which not more than $85,000,000 shall be obligated in fiscal year 1989.

The Committee recognizes that airport operators will have to undertake a substantial effort to comply on a timely basis with the Federal Aviation Administration's new requirements for acquiring and installing access control systems. We expect the Federal Avia-

tion Administration to make substantial efforts to assist the airports in developing technically sound programs to meet the deadlines. The Federal Aviation Administration should not passively sit on the side lines and limit its role to that of an umpire saying "yes" or "no" to security programs proposed by airports. Rather, the FAA should immediately begin to meet with individual airport operators and representative groups or operators to develop programs cooperatively.

We understand that a number of airports are ready to go forward on an expedited basis to develop and install access systems well in advance of the deadlines established by the rules. The FAA should make a special effort to work with these airports and should make authorized funds available so that these airports can complete their systems at the earliest possible date. The experience which is gained through work at these airports should be shared with other airports immediately so that other airports can benefit from the lessons learned and comply on a timely basis with the FAA's deadlines.

The Committee also expects the FAA to be flexible in working with parties affected by access control regulations. If it is possible to develop alternative solutions which will not detract from security but will be less burdensome to affected parties, such solutions should be encourged. For example, air carrier flight crews changing aircraft at hubs have encountered substantial delays in going through passenger screening. These delays have caused delays for passengers connecting at the hub. The FAA should make every effort to develop alternative security procedures which would speed up the process while still affording all necessary security.

Another situation in which flexible approaches should be explored involves airports which are planning to close down in the next few years. The FAA should work with these airports to explore whether it is possible to develop a security program which will require less investment in capital equipment while furnishing the same level of security.

(C) With respect to the grant authority in (A) and (B) above, each grant agreement must provide that no payment of funds shall be made before October 1, 1989. A grant shall be deemed to be a contractual obligation of the United States. Funds made available for these programs shall not be subject to any obligation limitation.

(D) Rescinds $270,000,000 of unobligated contract authority available for airport and development and planning.

Section 104. Airport security programs

Provides that the Administrator may approve an amendment to an airport security program which incorporates a security program of an airport tenant having access to secured areas of the airport. The tenant's security program must incorporate the measures by which the tenant will carry out within its leased areas or areas designated for its exclusive use, the security requirements imposed by the Administrator. The program must provide methods for the airport operator to monitor and enforce the tenant's compliance with the security program and must provide that the tenant will be required to pay financial penalties to the airport operator if the tenant fails to carry out any security requirements. If the Adminis-

trator approves a program the airport operator may not be found to be in violation of security requirements in any case in which the operator demonstrates that the tenant (or an employee or invitee of the tenant) is responsible for a violation and that the airport operator has complied with all measures in its security program for securing compliance with the program by the tenant.

Section 105. Public notification of foreign carrier security program status

Provides that the Secretary of Transportation shall publish periodically but not less than quarterly, the names of those foreign air carriers which are complying with security measurers which the Administrator has imposed on United States air carriers serving the same airport as such foreign air carriers. In making this evaluation, the Secretary shall consider only the security measures which a foreign air carrier carries out on flights between a foreign airport and airports in the United States only.

Section 106. Rulemaking proceeding

Provides that not later than 90 days after date of enactment the FAA Administrator shall initiate a rule making proceeding to propose and consider metods of improving the effectiveness of security screening of air carrier passengers and carry on baggage. The proposals considered shall include proposals for federal certification of air carriers screening personnel and proposals to improve the qualifications, training, management, and retention of such personnel.

TITLE II—DEPARTMENT OF STATE

Section 201. Aviation equipment

Provides that the Secretary of State shall take all appropriate steps necessary for ensuring that equipment necessary for implementing airport and air carrier security measurers at foreign airports is considered by government of foreign countries to be aviation equipment for customs purposes and exempt from customs duties and taxes.

COMMITTEE ACTION AND VOTE

With respect to clause 2(l)(2) and (A) and (B) of the Rules of the House of Representatives, the Committee, with a Majority present, favorably reported H.R. 1659 as amended, by a voice vote on May 4, 1989.

Prior to the Committee's action, the Subcommittee on Aviation held hearings on aviation security on March 21 and 23, and on April 25 the Subcommittee held a hearing on H.R. 1659. On May 2, the Subcommittee on Aviation favorably reported H.R. 1659 to the full committee.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 2(l)3(A) or Rule XI of the Rules of the House of Representatives, the Committee reports that no separate

hearings were held on the subject matter of the legislation by the Subcommittee on Investigations and Oversight.

With respect to clause (2)(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has not received a report from the Committee on Gvoernment Operations pertaining to the subject matter.

CONGRESSIONAL BUDGET ACT REQUIREMENTS

With respect to clause (2)(l)(3)(B) of rule XI of the Rules of the House of Representatives, and in compliance with section 308(a) of the Congressional Budget Act of 1974, the Committee reports that H.R. 1659 does not provide any new budget authority or new or increased tax expenditures.

With respect to clause (2)(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee has received the following report from the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 1989.

Hon. GLENN M. ANDERSON,
Chairman, Committee on Public Works and Transportation, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 1659, the Aviation Security Act of 1989.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 1659.
2. Bill title: Aviation Security Act of 1989.
3. Bill status: As ordered reported by the House Committee on Public Works and Transportation, May 4, 1989.
4. Bill purpose: H.R. 1659 would require the Administrator of the Federal Aviation Administration (FAA) to require all air carriers to install and use explosive detection equipment at airports located outside the United States where the Administrator has determined that air carriers must use extraordinary security measures, and at any other airports where the Administrator determines that the installation and use of such equipment is necessary. The bill would provide funding for air carriers to acquire such equipment, and would also provide funding for airport sponsors to acquire and install equipment needed to comply with regulations issued by the Administrator for controlling access to secured areas of airports. The bill also specifies that such funding would not be subject to any obligation limitation.

In addition, H.R. 1659 would:

—require the Secretary of Transportation to publish periodically the names of those foreign air carriers complying with security

measures imposed upon U.S. air carriers serving the same airports as such foreign air carriers;

—require the Administrator to initiate a rulemaking proceeding to consider methods to improve the effectiveness of security screening of air carrier passengers and carry-on baggage;

—require security screening of all passengers of aircraft with seating for more than 30 passengers at airports regularly served by aircraft with seating for more than 60 passengers, and the carry-on baggage of such passengers; and

—require the Secretary of State to ensure that necessary security equipment at foreign airports is considered by foreign governments to be aviation equipment for customs purposes and exempt from customs duties and taxes.

5. Estimated cost to the Federal Government: H.R. 1659 would provide $100 million in direct spending authority for the Administrator to make grants from the Airport and Airway Trust Fund to air carriers to pay up to 100 percent of the cost of acquiring the required explosive detection equipment. The bill would also provide $170 million in direct spending authority for the Administrator to make grants from the Airport and Airway Trust Fund to airport sponsors to pay up to 100 percent of the cost of acquiring equipment used to comply with regulations issued by the Administrator for controlling access to secured areas of airports. In addition, H.R. 1659 would rescind $270 million of unobligated contract authority available for airport development and planning pursuant to section 505(a) of the Airport and Airway Improvement Act of 1982, as amended. The bill would also require that no outlays be made prior to fiscal year 1990 for either the Air Carrier Security Assistance Program or the Airport Security Assistance Program.

The net effect of these provisions is summarized in the following table:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993	1994
Budget authority:						
Air carrier security assistance		100				
Airport security assistance		170				
Rescission of contract authority		270				
Total budget authority						
Estimated outlays		114	119	31	6	

In addition, CBO estimates that costs to the FAA associated with the minimum security screening standards would be $2 million to $3 million annually, assuming appropriation of the necessary funds.

The costs of this bill would fall within budget function 400.

Basis of estimate: CBO estimates that the required explosive detection equipment would cost approximately $1 million apiece, and that the $100 million in federal grants for this purpose would be disbursed during fiscal years 1990 and 1991. CBO expects that the $170 million in federal grants for equipment to control access to se-

cured areas of airports would be disbursed during fiscal years 1990–1993.

Based on information from the FAA, CBO estimates that costs associated with the rulemaking proceeding and the publication of the names of those foreign air carriers complying with security measures imposed upon U.S. air carriers serving the same airports *as such foreign air carriers* would not be significant. However, the bill does not prescribe the method of publication, and costs could vary depending on this method. Costs associated with the minimum security screening standards would result from the fact that the FAA would need to approve and periodically inspect additional airport and air carrier security programs.

There would be no significant costs to the State Department to carry out its responsibilities under the bill.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Mitchell Rosenfeld.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Inflationary Impact Analysis

With respect to clause 2(l)(4) of XI of the Rules of the House of Representatives, the Committee reports that there should be no inflationary impact on prices and costs in the operation of the national economy by enactment of H.R. 1659.

Cost Estimate of the Legislation

With respect to clause 7(A)(2) of rule XIII of the Rules of the House of Representatives, the Committee reports that no cost estimate of H.R. 1659 was submitted to the Committee by a government agency.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Aviation Act of 1958

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TITLE III—ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR

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SCREENING OF PASSENGERS

PROCEDURES AND FACILITIES

SEC. 315. (a) * * *

* * * * * * *

(c) INSTALLATION AND USE OF EXPLOSIVE DETECTION EQUIPMENT.—Not later than 60 days after the date of the enactment of this subsection, the Administrator shall require all air carriers to install and use, as expeditiously as possible, explosive detection equipment which meets minimum performance standards requiring application of technology equivalent to or better than thermal neutron analysis technology—

(1) at airports (A) which are located outside the United States, and (B) at which the Administrator has determined, on or before such date of enactment, that air carriers must use extraordinary security measures; and

(2) at such other airports (whether located within or outside the United States) as the Administrator determines that the installation and use of such equipment is necessary to ensure the safety of air carrier passengers.

(d) MINIMUM STANDARDS.—The regulations under this section shall at a minimum require screening of (1) all passengers of an aircraft used in scheduled passenger operations with seating for more than 30 passengers at each airport regularly served by aircraft used in scheduled passenger operations with seating for more than 60 passengers, and (2) the carry-on property of such passengers.

AIR TRANSPORTATION SECURITY

RULES AND REGULATIONS

SEC. 316. (a) * * *

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(g) AIRPORT TENANTS SECURITY PROGRAMS.—The Administrator may approve under this section a security program of an airport operator, and may approve an amendment to a security program of airport operator approved by the Administrator under subsection (b), which incorporates a security program of an airport tenant (other

than an air carrier separately complying with part 108 or 129 of title 14 of the Code of Federal Regulations) having access to the secured ~~areas of~~ the airport—

(1) if such program or amendment incorporates the measures by which the tenant will carry out, within the tenant's leased areas or areas designated for the tenant's exclusive use under an agreement with the airport operator, the security requirements imposed by the Administrator on the airport operator pursuant to the access control system requirements of section 107.14 of such title or to other requirements of part 107 of such title; and

(2) if such program or amendment incorporates the methods by which the airport operator will monitor and audit the tenant's compliance with such security requirements and provides that the tenant will be required to pay financial penalties to the airport operator in the event the tenant fails to carry out any such security requirement in accordance with a contractual provision or requirement imposed by the airport operator.

If the Administrator approves a program or amendment described in this subsection, the airport operator may not be found to be in violation of a requirement of this section in any case in which the airport operator demonstrates that the tenant or an employee, permittee, or invitee of the tenant is responsible for such violation and that the airport operator has complied with all measures in its security program for securing compliance with its security program by the tenant.

(h) PUBLIC NOTIFICATION OF FOREIGN CARRIER SECURITY PROGRAM STATUS.—For the purpose of notifying the public, the Secretary of Transportation shall publish periodically, but not less than quarterly, the names of those foreign air carriers which are complying with the security measures which the Administrator has imposed upon air carriers serving the same airports as such foreign air carriers.

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AIRPORT AND AIRWAY IMPROVEMENT ACT OF 1982

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SEC. 535. AVIATION SECURITY ASSISTANCE PROGRAMS.

(a) AIR CARRIER SECURITY ASSISTANCE PROGRAM.—Subject to such terms and conditions as the Administrator may establish, the Administrator is authorized to make grants from the Trust Fund to air carriers required to install and use explosive detection equipment under section 315 of the Federal Aviation Act of 1958 to pay up to 100 percent of the cost of acquiring such equipment.

(b) AIRPORT SECURITY ASSISTANCE PROGRAM.—Subject to such terms and conditions as the Administrator may establish by regulation, the Administrator is authorized to make grants from the Trust Fund to sponsors of airports to pay up to 100 percent of the cost of acquiring and installing equipment used to comply with regulations issued by the Administrator for controlling access to secured areas of airports.

(c) APPLICABILITY OF OTHER PROVISIONS.—Except as the Administrator may otherwise provide, the provisions of this title (other than section 503, relating to definitions) shall not apply to this section and grants made under this section.

(d) FUNDING.—

(1) AIR CARRIER SECURITY ASSISTANCE PROGRAM.—The amount available for carrying out subsection (a) shall not exceed $100,000,000 of which not more than $50,000,000 shall be obligated in fiscal year 1989.

(2) AIRPORT SECURITY ASSISTANCE PROGRAM.—The amount available for carrying out subsection (b) shall not exceed $170,000,000 of which not more than $85,000,000 shall be obligated in fiscal year 1989.

(3) CONTRACT AUTHORITY.—The Administrator is authorized to incur obligations to make grants from funds made available under this subsection. Each grant agreement under this section must provide that no payment of funds shall be made by the Administrator before October 1, 1989. Notwithstanding any other provision of law, approval by the Administrator of a grant with funds made available under this subsection shall be deemed to be a contractual obligation of the United States for payment of the Federal share of the cost of acquisition of equipment.

(4) INAPPLICABILITY OF OBLIGATION CEILINGS.—Funds made available by this subsection shall not be subject to any obligation limitation.

ADDITIONAL VIEWS

While we support the laudable goals of this legislation to counter terrorist activity at foreign and domestic airports, we take this opportunity to raise several concerns that we have with the bill.

First of all, the bill does not really accomplish anything to increase security that Administration is not already doing. The Department of Transportation has instituted a number of extraordinary measures since the bombing of Pan Am 103 in Lockerbie, Scotland. These include a requirement that airlines complete 100 percent X-ray or physical inspection of all checked baggage, denial of passenger access to the baggage once checked and inspected, a positive match of passenger and baggage, and random selection of passengers for enhanced screening. More recently, the Secretary of Transportation has been working through the International Civil Aviation Organization to work towards strengthened security procedures throughout the world. Also, the Secretary has asked the Federal Aviation Administration to initiate a rulemaking to require airlines to install and utilize explosive detection systems, such as Thermal Neutron Analysis Systems at the earliest feasible date. Under this rule, the airlines will be responsible for assuming the cost of the detection equipment. TNA devices are the very ones required by the legislation. Other recent measures by the Administration include an increase in FAA's security force personnel, improvements in the security bulletin system, and requirements for use of state-of-the-art X-ray and metal detection equipment.

This, then, leads to the real issue of the bill: funding. Under the legislation, the Administrator of the Federal Aviation Administration is authorized to make grants from the Airport and Airway Trust Fund to both air carriers for the purchase of Thermal Neutron Analysis (TNA) devices and airport operators for the acquisition and installation of equipment used to comply with regulations for controlling access to secured areas of airports. $100 million is authorized for grants to air carriers for TNA devices and $170 million is authorized for grants to airports to purchase airport access systems. Grant money is made available by contract authority and according to the legislation is not subject to any obligation limitation imposed by the Appropriations Committee.

There are two fundamental problems with this funding. The first relates to the principle of providing grants out of the Trust Fund to airports and air carriers for *up to 100 percent* of the cost of security equipment. Under current law, the airlines are responsible for hiring security personnel and purchasing the equipment to screen passengers and baggage. No Trust Fund money is currently available for grants to air carriers. Even assuming, for the sake of argument, that this principle should be changed, grants up to 100 percent are clearly unprecedented and not good policy. Cost sharing is now required for grants to airports for airport development and

planning (which may be used for purchasing security devices) and should be required for this program.

It has been argued that terrorist attacks against U.S. flag carriers are in reality attacks against the United States and therefore the Federal Government should bear the cost of securing airports and aircraft. It should be noted that the U.S. government has already invested $60 million in developing TNA technology and will be installing six machines within the next six months at several high risk airports.

There are many U.S. corporations which operate abroad and are subject to varying degrees of terrorism. These are also attacks aganst the United States, not the particular company involved. These companies are responsible for security at their facilities abroad and receive no direct government subsidies to protect their property. Many of us question why the Federal Government should subsidize a single industry operating abroad to purchase security equipment. Moreover, it is ironic that the legislation subsidizes the large air carriers to purchase TNA devices but makes no similar provision for the small commuter carriers which will be required to purchase additional screening equipment under its terms.

If the air carriers are required to pay for the TNA devices required by this bill, they will be able to absorb the cost with a small surcharge imposed on flights to and from the high risk airports. We believe that this will not impose a burden on international travelers and will be accepted as a necessary cost of traveling to those destinations. While it has been argued that U.S. carriers will be competitively disadvantaged by this additional cost, we believe the opposite may well be the case. The small additional cost will be more than balanced by the increased security, which will result in more passengers selecting the U.S. carriers.

The second problem with the funding in the bill relates to the peculiarities of the Congressional budget process. During markup of the legislation, an amendment was adopted which rescinds $270 million in unobligated contract authority for airport capital development and planning. This rescission offsets funding for grants under the bill and so, as a result of the amendment, no new budget authority is created. Another amendment delays any payments until October 1, 1989, so that no outlays are made in the current fiscal year. While these provisions have succeeded in eliminating several points of order against the bill, we nevertheless have concerns that the budgetary arrangement will not produce the desired results as advertised.

The proponents of the rescission amendment argue that the outlays resulting from this new program will be "scored" to the Public Works Committee rather than the Appropriations Committee. If this is true, this program will not fall under the Appropriations Committee's allocations under section 302 of the Budget Act and will not be in competition with other transportation programs.

We have learned, however, that the outlays will be scored to the Public Works Committee for fiscal year 1990 alone. This results from the fact that the budget baseline for fiscal year 1990 has been established and it would be unfair for one committee to establish a program and then have the outlays for that year assigned to the Appropriations Committee. It is our understanding, however, that

for later fiscal years, the outlays will be assigned to Appropriations and will, therefore, be in competition with other transportation programs. This means that airport improvements and necessary safety programs may not be funded; it also means that other transportation programs may be cut back.

In sum, it is most unfortunate that the committee would rescind money intended for airport improvements and give that money to the airlines. While this money cannot currently be obligated because of obligation ceilings, it might be made available at a later time. Furthermore, it is unfortunate that the result of this program will likely be the cutting back of other vital transportation programs.

Finally, we must also point out the general budgetary impact of the bill. According to a preliminary Congressional Budget Office estimate, the bill would increase fiscal year 1990 outlays and the deficit projection by about $100 million unless offset, which breaches the new budget agreement and is not reflected in the pending fiscal year 1990 budget resolutions. The deficit would be substantially increased while bypassing the budget and appropriations process. Thus, the ability of Congress to comply with the Gramm-Rudman-Hollings deficit target of $100 billion will be hindered. For fiscal years 1991 and 1992, CBO estimates outlays of $100 million and $70 million, respectively.

The real solution to the funding problems of the Airport and Airway Trust Fund is to take the fund off budget. We believe the time has come to eliminate all aviation Trust Fund programs from the unified budget and put trust back in the Airport and Airway Trust Fund by spending the money for the purposes for which it was collected, rather than addressing the issue on a piecemeal basis. This is the only approach which will truly free the Trust Fund which has been captive to the budget deficit.

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